

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Improving Public Safety Communications in the 800 MHz Band	)	WT Docket No. 02-55
	)	
	)	
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels	)	
	)	
	)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems	)	ET Docket No. 00-258
	)	
	)	
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service	)	ET Docket No. 95-18
	)	

To: The Commission

**PETITION FOR CLARIFICATION**

Fox Television Stations, Inc., the licensee of KDVR(TV), Denver, Colorado, and Gray Television Licensee, Inc., the licensee of stations WTAP-TV, Parkersburg, West Virginia and WIBW(TV), Topeka, Kansas (collectively, the "Joint Petitioners") hereby request that the Commission clarify that both the *Report and Order* and the *Memorandum Opinion and Order* in WT Docket No. 02-55<sup>1</sup> (collectively, the "*Public Safety Orders*") contemplate that Sprint Nextel Corporation ("Sprint Nextel") will relocate broadcast auxiliary service ("BAS") facilities that

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<sup>1</sup> *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18, *Report and Order*, *Fifth Report and Order*, *Fourth Memorandum Opinion and Order*, and *Order*, 19 FCC Rcd 14969 (2004) ("*Report and Order*"); *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18, *Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005) ("*Memorandum Opinion and Order*").

operate exclusively on a “short-term” basis pursuant to Section 74.24 of the Commission’s rules,<sup>2</sup> and that Sprint Nextel will receive credit for the costs it incurs to relocate such facilities where the broadcaster has demonstrated to Sprint Nextel that the facilities were in use prior to November 22, 2004, the reimbursement eligibility cut-off date specified in the *Memorandum Opinion and Order*.<sup>3</sup> Stations KDVR, WTAP-TV and WIBW all own and operate 2 GHz BAS facilities that were in use prior to November 22, 2004, pursuant to the FCC’s authority granted in Section 74.24, and utilize such facilities to provide their local communities with coverage of breaking news events.<sup>4</sup>

Despite the *Report and Order*’s clear language that Sprint Nextel is “obligated to participate in the relocation of *all* BAS operations from 1990-2025 MHz,”<sup>5</sup> Sprint Nextel has taken the position that it is not required to relocate BAS facilities operating pursuant to Section 74.24. Consequently, many broadcasters operating lawfully under Section 74.24 face the obsolescence of their 2 GHz BAS equipment, much of which is used for critical newsgathering purposes. The clarification requested herein would not only ensure that the important services provided by short-term BAS operations continue without disruption, but would also minimize the number of BAS incumbents that could interfere with or otherwise delay the deployment of

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<sup>2</sup> 47 C.F.R. § 74.24.

<sup>3</sup> *Memorandum Opinion and Order* at ¶ 105.

<sup>4</sup> Specifically, station KDVR operates five ENG trucks, one ENG helicopter, six fixed receive sites, two portable transmitters and one portable receiver pursuant to Section 74.24. Station WTAP-TV operates one ENG truck, one fixed receive site, one fixed transmitter and two portable transmitters pursuant to Section 74.24. Station WIBW operates two ENG trucks, one fixed receive site, one fixed transmitter and two portable transmitters pursuant to a license received in April 2005. Prior to receiving the license, WIBW operated the above-listed BAS equipment for several years pursuant to Section 74.24.

<sup>5</sup> *Report and Order* at ¶ 252 (emphasis added).

Sprint Nextel's operations in the 2 GHz band, thereby ensuring that the BAS relocation is completed without complication in a timely fashion.

In the *Public Safety Orders*, the Commission's language is unequivocal as to Sprint Nextel's obligation to relocate *all* BAS facilities operating in the 2 GHz band. Indeed, the agency refers to Sprint Nextel's obligation to relocate "all BAS operations," "all BAS incumbents" or "all BAS licensees" at least twenty-three times in the *Report and Order*, and reiterates such obligation in the *Memorandum Opinion and Order*.<sup>6</sup> The *Public Safety Orders* provide no exceptions to the requirement that Sprint Nextel clear the entire 2 GHz band of incumbent BAS operations. Accordingly, given the unambiguous wording of the Commission's orders, broadcasters have long understood the BAS relocation plan to encompass short-term BAS facilities operated exclusively under Section 74.24.<sup>7</sup> Sprint Nextel, however, has taken the view that it is not required to relocate this subset of BAS operations. The Joint Petitioners are concerned, therefore, that absent clarification from the Commission, some or all of their short-term BAS facilities will not be relocated, thereby hindering their ability to provide important newsgathering services to the public.

Subject to certain limitations, Section 74.24 of the FCC's rules allows broadcast licensees to operate BAS facilities on a short-term basis without seeking a separate BAS authorization from the Commission. A broadcaster's authority to operate a BAS facility pursuant to Section

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<sup>6</sup> See *Report and Order* at ¶¶ 57, 61, 251-56, 266, 268, 270, 273, 275, 326, 347, 353; *Memorandum Opinion and Order* at ¶¶ 101, 106, 112.

<sup>7</sup> Indeed, the Commission specifically included Section 74.24 facilities in the *Mobile-Satellite Service Third Report and Order* as an example of BAS operations that MSS licensees would be required to relocate in certain markets. See *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Docket No. 95-18, ET Docket No. 00-258, IB Docket No. 01-185, *Third Report and Order and Third Memorandum Opinion and Order*, 18 FCC Rcd 23638, at ¶ 14 (2003) ("*MSS Third R&O*"). The agency has stated that the current BAS relocation plan is simply a revision of the plan outlined in the *MSS Third R&O*, "retaining the existing MSS relocation rules but also overlaying procedures by which Nextel may relocate BAS incumbents. . . ." *Report and Order* at ¶ 250.

74.24 comes not from a facility license issued under Part 74, but instead is a right conferred by the broadcaster's Part 73 license. Specifically, Section 74.24 authorizes a television broadcaster to operate BAS facilities without a separate Part 74 license so long as the operation protects separately licensed BAS facilities, is frequency coordinated with other BAS users in the market and does not exceed 720 hours annually per frequency. Finding the 720 hours afforded by Section 74.24 to be sufficient, many broadcasters simply choose to operate their BAS facilities with the authority conferred by their Part 73 license and routinely communicate with licensed BAS users in their markets to coordinate their respective BAS operations.

In the *Public Safety Orders*, the Commission noted that a primary goal of the 2 GHz relocation is to minimize disruption to existing BAS operations.<sup>8</sup> This goal stems from the agency's recognition that BAS operations are "a critical part of the broadcasting system by which emergency information and entertainment content is provided to the American public."<sup>9</sup> Among other things, broadcasters rely upon their BAS facilities, including those authorized under Section 74.24, to provide live "on-the-scene" coverage of important news and weather events. These BAS facilities are vital to a television station's ability quickly to transmit critical information concerning breaking news stories and local emergencies. If a broadcaster's "short-term" BAS operations are not relocated, its ability to provide up-to-the-minute news and weather information will be severely compromised.

Moreover, given the importance of Section 74.24 BAS facilities to television broadcasters' overall operations and service to the public, without the clarification requested herein, some broadcasters may be disinclined to cease their BAS operations, thereby

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<sup>8</sup> *Report and Order* at ¶ 250; *Memorandum Opinion and Order* at ¶ 106.

<sup>9</sup> *Report and Order* at ¶ 250; *Memorandum Opinion and Order* at ¶ 101.

complicating the timely deployment of Sprint Nextel's operations in the 2 GHz band. To avoid this situation, the Commission should simply clarify that Sprint Nextel will receive credit for funding the relocation of BAS incumbents using short-term facilities pursuant to Section 74.24 where the BAS operator can demonstrate conclusively that such facilities were in use prior to November 22, 2004.<sup>10</sup> As the Commission has recognized, "if there are few (or no) BAS incumbents left in a particular market that could interfere with or otherwise complicate the deployment of Nextel's operations in the band, it would help ensure that the BAS relocation is completed without complication by 2007, will minimize disruption to BAS operations, and will simplify negotiations with BAS incumbents."<sup>11</sup>

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<sup>10</sup> Specifically, the Joint Petitioners submit that only those broadcasters – such as themselves – who can present tangible evidence (e.g., receipts, invoices, video, etc.) to demonstrate that their BAS equipment was operational before November 22, 2004, should be considered eligible for reimbursement.

<sup>11</sup> *Memorandum Opinion and Order* at ¶ 106.

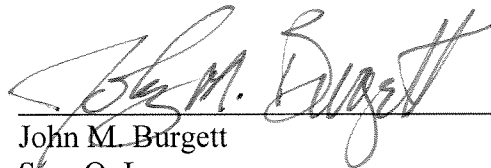
Accordingly, for the foregoing reasons, the Joint Petitioners respectfully request that the Commission clarify (i) that the *Public Safety Orders* require Sprint Nextel to relocate those BAS facilities that a broadcaster can demonstrate were operated prior to November 22, 2004, under authority conferred by Section 74.24 of the Commission's rules and (ii) that Sprint Nextel may receive credit for the costs it incurs in relocating such facilities.

Respectfully submitted,

**FOX TELEVISION STATIONS, INC.**

**GRAY TELEVISION LICENSEE, INC.**

By:

A handwritten signature in black ink, appearing to read "John M. Burgett", is written over a horizontal line.

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March 20, 2007

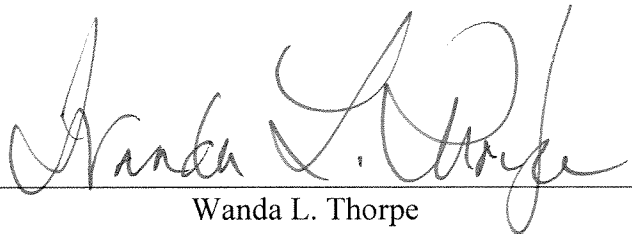
**CERTIFICATE OF SERVICE**

I, Wanda L. Thorpe, hereby certify that on March 20, 2007, I caused a copy of the foregoing Petition for Clarification to be mailed via first-class postage prepaid mail to the following:

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